Table of Contents

	PAGE
Interest of the Amicus	1
Argument:	
I. Minimum standards of justice dictate that any final adjudication of the nonconformity of the California law to the federal requisites of the Social Security Act should reflect exhaustive consideration of the position of Secretary of Labor	3
II. Invalidation by the district court of Section 1335 of the California statute on both constitutional grounds of due process infringement and statutory grounds of nonconformity with the Social Security Act compels full review by this Court	6
III. The decision of the district court places the more fundamental issue before this Court of whether or not the concept of due process protected by the Fourteenth Amendment to the United States Constitution, coupled with the federal standards provided for in the Social Security Act, so preempt the question of postponement of benefits pending possible disqualification so as to deprive the various state legislatures of the right to set up a system of adjudication of contested claims which involve postponement of benefits	8
Conclusion	11

Table of Citations

Cases

Carmichael v. Southern Coal Co., Carmichael v. Gulf States Paper Corporation, 301 U.S. 495 (1937) 9, 10

PAGE

Dandridge v. Williams, 397 U.S. 471 (1970) 5

Goldberg v. Kelly, 397 U.S. 254 (1970) 6, 7, 8

Kelly v. Wyman, 294 F. Supp. 893 (D.C.S.D.N.Y., 1968) 7

King v. Smith, 392 U.S. 309 (1968) 5

Rosado v. Wyman, 397 U.S. 397 (1970) 4, 5

Steward Mach. Co. v. Davis, 301 U.S. 548 (1937) 4, 9

Statutes

California Unemployment Insurance Code, California Statutes, 1953, Section 1335 ..... 2, 3, 6, 7, 8

Maryland Unemployment Insurance Law, Maryland Annotated Code, Art. 95A:

Section 1 2

Section 7 2

1935 Social Security Act, 49 Stat. 626, 42 U.S.C., Sections 301-1305 ..... 3, 4, 5, 6, 7, 8, 9, 10

Other

House Report No. 615, 74th Congress, 1st Session (1935) 4

Senate Report No. 628, 74th Congress, 1st Session (1935) 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 507

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, ET AL.,

Appellants,

v.

JUDITH JAVA, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRIEF OF THE STATE OF MARYLAND, AS AMICUS CURIAE

INTEREST OF THE AMICUS

The filing of the Appellants' jurisdictional statement occasioned by the decision of the three-judge court sitting as the United States District Court for the Northern District of California,* has raised legal questions that will inevitably have a momentous effect on every state's administration of its unemployment insurance program, and, more

* Not officially reported, but is contained as Appendix A to Jurisdictional Statement of Appellants.

specifically, on the unemployment insurance program of the State of Maryland, which is administered by the Maryland Department of Employment Security under the State Act.[1] Although the provision in the Maryland law which postpones the payment of benefits pending adjudication of an appeal from an initial determination by an examiner[2] does not employ the identical language of Section 1335[3] of the California unemployment insurance law which is under attack, the legislative objectives of the two provisions are similar and any final judicial decision construing the California statute directly affects administrative implementation of the Maryland Statute. The State of Maryland, without opining on the merits of the specific controversy between the principal litigants which culminated not only in

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[1] (Unemployment Insurance Law of Maryland) Laws of Maryland, Second Extraordinary Session, Dec., 1936, c. 1, Maryland Ann. Code, Art. 95A, Section 1, et seq. (1969).

[2] (a) The pertinent provisions of the Maryland statutory scheme are contained in Maryland Ann. Code, Art. 95A, Sec. 7, *Claims for Benefits*, subsection (i) (1969):

> *"Benefits shall be promptly paid in accordance with a determination except that, if the record of the proceeding on the claim indicates that a disqualification has been alleged or may exist, such benefits shall not be paid prior to the expiration of the period for appeal.* If pursuant to a determination benefits are payable in any amount as to which there is no dispute, such amount of benefits shall be promptly paid regardless of any appeal. The commencement of a proceeding for judicial review shall not operate as a supersedeas or stay unless the Board of Appeals shall so order. If a determination of an examiner allowing benefits is affirmed by a referee, or if a determination of a special examiner or a decision of a referee allowing benefits is affirmed by the Board of Appeals, such benefits shall be promptly paid regardless of any further appeal." (Emphasis added.)

(b) In contrast with California's ten-day appeal period, Maryland employs a seven-day period. Maryland Ann. Code, Art. 95A, Sec. 7(e) (1969).

[3] That language being: "If an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after such decision" [followed by enumerated exceptions not applicable here and thus not set forth]. Calif. Stats. 1953, c. 308, p. 1509, Sec. 1335.

the District Court's criticism of California's particular administrative modus operandi of Section 1335 but its total invalidation, finds more substantial legal questions created but left unresolved by the lower tribunal than resolved by it, all of which causes a morass for any state attempting to legislate workable procedural machinery in supplementation of the aims of the Federal Social Security Act.[4] Because Maryland believes that any judicial inquiry into the legality of a state's established administrative machinery for the payment of benefits in a unique field such as that of unemployment insurance should be initiated, if at all, in a spirit of resolution and not dissolution, and concluded, if at all, with meaningful adjudication, accompanied by specific guidelines and procedures adaptable to the administrative realities of unemployment insurance as opposed to the administrative exigencies of general welfare and relief programs, it urges the granting of the Appellants' quest for plenary review and oral argument in this Court.

ARGUMENT

I.

MINIMUM STANDARDS OF JUSTICE DICTATE THAT ANY FINAL ADJUDICATION OF THE NONCONFORMITY OF THE CALIFORNIA LAW TO THE FEDERAL REQUISITES OF THE SOCIAL SECURITY ACT SHOULD REFLECT EXHAUSTIVE CONSIDERATION OF THE POSITION OF THE SECRETARY OF LABOR.

With the exception of initial acknowledgment that the California unemployment compensation program had been certified by the Secretary of Labor under the provisions of the Social Security Act, the opinion of the three-judge district court holding Section 1335 to be defective on statutory grounds is noticeably devoid of any consideration of the official administrative position of the Secretary of Labor

[4] Act of August 14, 1935, c. 531, 49 Stat. 620, as amended, 42 U.S.C. §301-1305.

insofar as the existence in state unemployment compensation laws of a system of adjudication of contested claims which allows postponement of benefits pending final adjudication. It is Maryland's considered position that any final holding of nonconformity by the judiciary should, at the very least, be flanked with the benefit of the expertise of the very federal agency which has as one of its primary objectives the scrutinizing of a state's "methods of administration" so as not to run afoul of federal standards.[5] A decision of such importance to the national administration of state unemployment compensation laws should not be one delivered in vacuum, especially when it is recognized that the federal agency prepared and took draft bills to the various state legislatures to enable and induce them to pass unemployment insurance laws providing for compensation in accordance with federal requirements.[6] Although the majority opinion of this Court in *Rosado v. Wyman*, 397 U.S. 397, 420 (1970), one of the many controversies finding its way to this Court dealing with the compatibility of state social services programs with the Aid for Dependent Children Provisions of the Social Security Act rejected the argument that a federal court was with-

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[5] 49 Stat. 626, 42 U.S.C., Sec. 503(a)(1) provides: *"The Secretary of Labor shall make no certification* for payment *to any State unless he finds that the law of such State,* approved by the Secretary of Labor under the Federal Unemployment Tax Act, *includes provision for—*

> (1) *Such methods of administration* (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) *as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due. . . ."* (Emphasis added.)

[6] See Justice Butler's dissenting opinion in *Steward Mach. Co. v. Davis*, 301 U.S. 548, 616 at 618 (1937); see, generally, House Report No. 615, 74th Congress, 1st Session; Senate Report No. 628, 74th Congress, 1st Session (1935).

out power to review state welfare provisions or prohibit the use of federal funds by the states in view of the fact that Congress had lodged in the Department of Health, Education and Welfare administrative powers to cut off federal funds for noncompliance with statutory requirements, nevertheless, in remanding the case to the district court, specifically instructed the court that its review of any revised program adopted should take into account the views of HEW. While the *Rosado* Court expressed great reluctance to find Congressional intent to foreclose judicial review of the state's administration of the HEW program, the Court may wish to re-evaluate its position on that issue insofar as the position of the Secretary of Labor as overseer of state unemployment compensation programs. Although the Maryland administration may be drawn to the logic of Mr. Chief Justice Berger and Mr. Justice Black, who, in commenting on the majority position of this Court's sanctioning judicial review in the A.F.D.C. welfare line of cases concluded that "judicial pre-emption of the agency's (HEW) rightful responsibility can only lead to the collapse of the enforcement scheme envisioned by Congress,"[7] it is neither necessary nor the purpose of this brief to venture into the merits of that position, since this Court in *Dandridge v. Williams*, 397 U.S. 471, 481-482 (1970), another of the A.F.D.C. regulated state welfare benefit controversies, placed direct reliance on the position of the Secretary of Health, Education and Welfare as to the approval of the Maryland State welfare plan in ruling that the particular Maryland regulation under attack was not prohibited by the Social Security Act. See also the concurring opinion of Mr. Justice Douglas, *King v. Smith*, 392 U.S. 309, 334 (1968), wherein reluctance was expressed to follow the statutory route travelled by the majority in con-

[7] *Rosado v. Wyman*, 397 U.S. 397, at 434 (1970).

cluding that an Alabama statewide regulation promulgated in administration of its federally funded A.F.D.C. program was in conflict with the Social Security Act of 1935, in view of the "long-standing administrative construction" by HEW which had approved other state A.F.D.C. plans containing the provision under attack.

Judicial review and further hearing by this Court, coupled with exploration of the position of the Secretary of Labor on a question of such national importance to the administration of the states' unemployment insurance programs, is certainly preferable to a lower court decision markedly absent serious consideration of the Secretary's position.

II.

INVALIDATION BY THE DISTRICT COURT OF SECTION 1335 OF THE CALIFORNIA STATUTE ON BOTH CONSTITUTIONAL GROUNDS OF DUE PROCESS INFRINGEMENT AND STATUTORY GROUNDS OF NONCONFORMITY WITH THE SOCIAL SECURITY ACT COMPELS FULL REVIEW BY THIS COURT.

The opinion of the district court found Section 1335 of the California Code defective on due process infringement grounds on the basis that the California law fails to provide for pre-termination hearing procedures contrary to the principles recently laid down by this Court in *Goldberg v. Kelly*, 397 U.S. 254, 266-271 (1970). In fact, it is this broad swath approach by the district court directing state unemployment insurance administrators to incorporate by reference the pre-termination hearing procedures enunciated in *Goldberg, supra*, which were formulated in the atmosphere of the peculiar setting of administrative coordination of welfare payments into the equally unique field of unemployment insurance administration, all without consideration to the innumerable differences in the two programs not only in underlying social and economic

philosophy but in administrative objectives that, unless clarified by this Court, threatens to make havoc of each state's administration of its program. What guidelines does any state unemployment insurance administrator now follow to assure constitutional conformity of a pre-termination hearing? The opinion of the district court is sorely deficient in answers to such questions. This Court decided *Goldberg* on a very narrow issue of due process as dictated by the posture in which the case came on before the Court. A reading of the three-judge lower court decision reported as *Kelly v. Wyman*, 294 F. Supp. 893, 902 (D.C. S.D.N.Y., 1968), reveals that the district court sharpened the issue to one of singular due process constitutionality as opposed to statutory interpretation for conformity with the Social Security Act only because the Social Security Act did not apply to the majority of the original and intervening plaintiffs who instituted the action. The constitutional issue of due process infringement may not be reached if review initially directs itself to the more fundamental issue of whether or not a state law's mere inclusion, per se, of a stay of benefit payments which is handled with normal dispatch within the administrative capabilities of its particular program (in California's case, a median period of seven weeks) is necessarily violative of Section 503(a)(1) of the federal Act requiring a state program capable of insuring payment of benefits "when due." Should this Court conclude that a state's implementation of a Section 1335 provision is not inconsistent with the national ideology of running a state program "reasonably calculated to insure full payment of unemployment compensation *when due*," the rationale behind the pre-termination hearing requisites called for by *Goldberg* on due process grounds may be considered by this Court as inapplicable where the act of nonpayment of

benefits because not then "due" within the meaning of Section 503(a)(1) cannot be equated to an act of termination of such benefits within the meaning of *Goldberg*. The lower court's holding that Section 1335 is violative of due process guarantees should not escape extensive judicial review when the district court conjunctively found nonconformity invalidation.

The approach of the district court in painting over the statutory grounds with broad strokes of due process, i.e., by grounding its decision in terms of California's seven week median time lapse (a constitutional approach) as the basic criteria for finding nonconformity with the federal standard of "when due" (the statutory approach), creates the most nebulous of criteria and leaves unanswered the most obvious of innumerable questions, e.g., where between one day and seven weeks does conformity and nonconformity suddenly become apparent?

III.

THE DECISION OF THE DISTRICT COURT PLACES THE MORE FUNDAMENTAL ISSUE BEFORE THIS COURT OF WHETHER OR NOT THE CONCEPT OF DUE PROCESS PROTECTED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, COUPLED WITH THE FEDERAL STANDARDS PROVIDED FOR IN THE SOCIAL SECURITY ACT, SO PREEMPT THE QUESTION OF POSTPONEMENT OF BENEFITS PENDING POSSIBLE DISQUALIFICATION SO AS TO DEPRIVE THE VARIOUS STATE LEGISLATURES OF THE RIGHT TO SET UP A SYSTEM OF ADJUDICATION OF CONTESTED CLAIMS WHICH INVOLVE POSTPONEMENT OF BENEFITS.

Much of the preceding discussion foreshadows the crucial issue which this case squarely places before the Court, that is, the right of a state to formulate reasonable administrative procedures in discharge of its dual role as a fiduciary of tax revenues which are to be used to promote

the national concepts of an unemployment insurance program and an arbitrator seeking fairness in the claimant-employer relationship.

As this Court, speaking through Justice Cardozo, remarked in *Steward Mach. Co. v. Davis*, 301 U.S. 548, at 593 (1937), wherein the constitutionality of the unemployment insurance tax provisions of the 1935 Social Security Act was established:

> "A wide range of judgment is given to the several states as to the particular type of statute to be spread upon their books."

and, at 595:

> "A state looking for a credit must give assurance that her system has been organized upon a base of rationality."

And, continuing, in *Carmichael v. Southern Coal Co., Carmichael v. Gulf States Paper Corporation*, 301 U.S. 495, at 510 (1937), through Mr. Justice Stone:

> "This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

The basic question of the right of the states to establish and administer benefit rights, benefit amounts, payment programs, waiting periods, tax rates and tax exemptions, all or most of which have been either directly or by inference recognized in *Carmichael v. Southern Coal Co., Carmichael v. Gulf States Paper Corporation,* 301 U.S. 495 (1937), are all indirectly involved in this case as this Court must draw definitive lines so as to protect the right of the states to administer their programs within the very general and inexplicit language of the federal standards and of the United States Constitution. Maryland recognizes that the law is dynamic but is reluctant to concede that due process in whatever form and the federal standards of the Social Security Act, however broad, encroach upon the right of a state to administer its unemployment insurance program complementing national objectives with a wide range of discretion.

The decision of the California district court may signify future attacks on a wide front on state unemployment insurance laws and this Court's timely guidance is needed to impede legal erosion of the very foundations supporting a state's right to administer with broad discretion its local unemployment insurance law.

Consideration of this most basic issue by the Court can best be achieved through the exercise of extensive review by this Court.

CONCLUSION

It is respectfully submitted that the judgment of the California three-judge district court raises substantial legal questions of national importance warranting plenary judicial review, including briefs on the merits and oral argument, before this Court.

Respectfully submitted,

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